HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

M.A.C. No. 129 of 2007

Appellant / Non-applicant No.1 : Anand Travels, Through Shri Pratosh Kumar Gupta, son of Namnath Gupta Resident of Lolki, Thana and Tahsil Pratappur, District Sarguja (CG)

Versus

Respondents :
1. Chullu Ram, son of Bhulan Ram, aged about 67 years,
2. Hullaso, wife of Chullu Ram, aged about 63 years,
3. Vijay, son of Chullu Ram, aged about 22 years,
4. Dhananjay, son of Chullu Ram, aged about 22 years,
5. Ramlal, son of Chullu Ram, aged about 18 years,

All resident of Village Khunshi, Thana and Tahsil Pratappur, District Sarguja (CG)

CLAIMANTS

6. Bisakho Bai, widow of Bhishm Singh, Through Shivmangal Singh, aged about 26 years, resident of Village Raisra, Post Chandrameda, Tahsil Surajpur, District Sarguja (CG)

CLAIMANT NO.3

7. The Oriental Insurance Company Limited, Through Branch Manager, The Oriental Insurance Company Limited, Branch Office, Ambikapur, District Sarguja (CG)

NON-APPLICANT NO.4

Appeal under Section 173 of Motor Vehicles Act

Present: Shri Pankaj Agrawal, counsel for the appellant.
None appeared for respondents No.1 to 6 though served.
Shri Sudhir Agrawal, counsel for respondent No.7.

ORAL ORDER

(Passed on 07.12.2007)

Heard on M.C.P. No.196/2007 for condonation of delay of 59 days in filing this appeal.

(2) Considered and allowed. For the reasons mentioned in the application, delay is condoned.

(3) The appeal is heard finally today with the consent of the parties.

(4) This is an appeal by the owner against the order dated 31.8.2006 passed by the 1st Additional Motor Accidents Claims Tribunal, (hereinafter referred to as the M.A.C.T.) Surajpur, District Sarguja (CG) in claims case No.87 of 2002, whereby an application under Order-9 Rule-13 C.P.C for setting aside the ex parte award dated 9.2.2004 was dismissed.

(5) Learned counsel for the appellant did not dispute that in claims case No.7/2004, the appellant/owner had first appeared before the M.A.C.T. on 6.9.2001 and thereafter absented. The appellant/owner was proceeded ex-parte on 21.9.2001 and ex-parte award was passed on 9.2.2004. For setting aside the ex-parte award, an application under Order-9 Rule-13 of C.P.C. was filed on 9.8.2004 i.e. much beyond the prescribed period of Limitation. No application for condonation of delay was filed.

(6) Under Article 123 of the Limitation Act, in a case where the appellant/owner had received summons of the claims case, period of limitation for filing appeal would be 30 days from the date of the award. The appellant/owner had appeared in the claims case No.7/2004 on 6.9.2001. The ex parte award was passed on 9.2.2004. Thus, since no application for condonation of delay was filed by the applicant, the application under Order-9 Rule-13 of C.P.C filed on 9.8.2004 being grossly barred by limitation under Article 123 of the Limitation Act, was rightly dismissed.

(7) There is no merit in this appeal, which is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya